

B-75



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Frank Custode, *et al.*, Department of the Treasury

Classification Appeals

CSC Docket Nos. 2014-2240, 2014-2241, and 2014-2242

ISSUED: JUL 17 2014 (SLK)

Frank Custode, Nancy Gonzalez, and Lourdes Morell appeal the attached decisions of the Division of Classification and Personnel Management (CPM) that the proper classification of their positions with the Department of the Treasury is Auditor 3, Taxation. The appellants seek a classification of Auditor 2, Taxation. These appeals have been consolidated due to common issues presented.

The record in the present matter establishes that the appellants' permanent title is Auditor 3, Taxation. They are assigned to the Division of Taxation, Audit Activity, Inheritance & Estate Tax Team 6 and report to Janine Burgoes, Supervising Auditor Taxation. The appellants do not have direct supervisory responsibility. The appellants sought reclassification of their positions, alleging that their duties are more closely aligned with the duties of an Auditor 2, Taxation. In support of their requests, each appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties he or she performs as an Auditor 3, Taxation. CPM reviewed and analyzed the PCQs completed by the appellants. In its decisions, CPM determined that the duties performed by the appellants were consistent with the definition and examples of work included in the job specification for Auditor 3, Taxation.

On appeal, Mr. Custode presents that in July 2011, he submitted a PCQ and CPM determined that his position should be classified as an Auditor 2, Taxation. However, in July 2013, he was returned to his permanent title of Auditor 3, Taxation since permanent appointments were made from an Auditor 2, Taxation eligible list. As a result, he submitted a second classification appeal. He claims that although his title has changed to Auditor 3, Taxation, his job duties have not.

In fact, he asserts that his duties are even more complex and that he has been assigned additional duties since he initially was classified as an Auditor 2, Taxation as a result of CPM's first determination. Therefore, the appellant maintains that the current classification determination contradicts its prior determination. The appellant underscores that he independently conducts screenings and auditing on the most complex estate tax returns and assists other Auditor 2s, Auditor 1s, conferees, and supervisors with understanding the complexity of State and Federal Estate Taxes. He argues that his current responsibilities are at least in line with those of an Auditor 2, Taxation, and he states that the auditing and screening of highly complex estate tax returns is normally assigned to an Auditor 1, Taxation. The appellant reiterates that he was assigned to the Estate Tax Team due to his ability to independently work on complex estate tax returns. He maintains that he is the "go-to guy" for answers to highly difficult tax situations and that all levels of auditors and management approach him to help resolve complex matters. The appellant also submits letters from his supervisor and program manager in support of his appeal.

Ms. Gonzalez states that she guides and collaborates in the training of newly assigned Auditors to the Estate Tax Team relating to audit procedures and that she supports other Auditor 2s and Auditor 1s in resolving setbacks that evolve during audit procedures. She claims that her eight years of experience on the Estate Tax Teams has granted her the opportunity to act as a lead auditor in the Division by assisting other auditors on the floor and tax payers with complex estate tax issues. The appellant explains that the organizational chart does not reflect the needs of the Branch and the reality that she is functioning as a lead worker. She maintains that it would be detrimental to replace knowledgeable and experienced Auditors in specialized positions with newly appointed Auditors from other tax departments that have to essentially start as Trainees to learn the very basics. The appellant presents that she independently audits moderate to highly complex estate tax returns which is not the responsibility of an Auditor 3, but that of an Auditor 1 and Auditor 2. She also indicates that due to her highly proficient understanding of State and Federal Estate tax rules and regulations, she independently examines one-third of all complex Estate Tax returns to determine which returns should be selected for an audit and that this responsibility is essential for assessing and collecting the proper tax due the State. The appellant highlights that CPM previously issued a determination that she was performing the duties of an Auditor 2, Taxation, and that even though she was returned to her permanent title of Auditor 3, Taxation, her duties have not changed. Ms. Gonzalez also submits letters from her supervisor and program manager in support of her appeal.

Ms. Morell states that she has been performing Auditor 2, Taxation duties since 2006. She highlights that CPM had determined in September 2011 that her position should be classified as an Auditor 2, Taxation. She presents that she not only performs all the duties that she had performed when it was previously

determined that her position should be classified as an Auditor 2, Taxation, but now she has the additional duty of independently screening complex Estate Tax returns to determine if further review is required. She argues that by screening and auditing the most complex tax returns received by the Division and independently determining if further review is necessary, it shows that she is performing the duties of an Auditor 2, Taxation. The appellant maintains that no other team in the Branch audits or reviews Estate Tax Column B returns and Auditors of all levels depend on her expertise for guidance. She claims that due to the promotional appointment, the Inheritance and Estate Tax Team acquired four Auditors who were promoted to Auditor 2, Taxation. However, the appellant argues that these Auditors are really functioning as Trainees and not as Auditor 2, Taxation. She argues that since she is performing the same duties as when she was initially determined to be an Auditor 2, Taxation, plus she now has the additional responsibility of screening Estate Tax returns, it is erroneous to determine that she is not performing the duties of an Auditor 2, Taxation. The appellant also submits letters from her supervisor and program manager who support her appeal.

In response, CPM provides that the appellants had all submitted classification appeals in August 2011 and at that time it was determined that the appropriate classification of each of their positions was Auditor 2, Taxation. Consequently, they were provisionally appointed to Auditor 2, Taxation pending a promotional examination. Thereafter, the appellants were not reachable on the list and were returned to their permanent title of Auditor 3, Taxation. Then, in October 2013, they each submitted a second classification appeal. CPM states that a comprehensive review, analysis, and evaluation was conducted, and since job duties of a position may evolve over time, each review of a position is performed independently and the results of a previous classification appeal do not impact a current classification appeal. It maintains that a second review of each of the appellant's job duties found that their positions receive limited supervision and perform Inheritance and Estate audits of some importance and difficulty. CPM indicates that although the appellants assert that their job responsibilities are complex and are typically assigned to a higher grade Auditor 1, Taxation and Auditor 2, Taxation, a position cannot be based solely in comparison to other positions that may be misclassified. Further, CPM represents that although the appellants argue that the primary change in their positions is an increase in the volume of work, changes in work volumes are not factored in job content reevaluations. CPM reiterates that the Auditor 2, Taxation position is characterized by leadership responsibility by acting regularly as a team leader of a small group of professional Auditors performing moderately difficult work and positions at this level are expected to be able to perform duties and resolve problems of moderate difficulty or complexity. Further, it highlights that the appointing authority's organization chart indicates that there are seven Auditor 2, Taxation and six Auditor 3, Taxation positions within the same unit and therefore the appellants are not functioning as lead workers. CPM presents that after a review of

the appellant's positions, it found that they received limited supervision and were primarily performing Inheritance and Estate audits of some importance and difficulty. It states that the appellants have not provided any additional duties or responsibilities that have been performed that would elevate their positions to an Auditor 2, Taxation.

CONCLUSION

The definition section of the job specification for Auditor 3, Taxation states:

Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related technical work as required.

The definition section of the job specification Auditor 2, Taxation states:

Under direction of a Supervising Auditor, Taxation, or Auditor I, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.

Incumbents in the Auditor 2, Taxation title may either work as lead workers or handle independent work of considerable complexity and importance. With respect to work as a lead worker, leadership roles refers to persons whose titles are non-supervisory in nature, but are required to act as a leader of a group of employees in titles at the same or lower level than themselves and perform the same kind of work as that performed by the group being led. *See In the Matter of Catherine Santangelo* (Commissioner of Personnel, decided December 5, 2005). In reviewing the appellants' PCQs, statements, and statements from their superiors, while they may spend some of their time advising and assisting auditors, this is not their primary responsibility and therefore they are not acting as lead workers.

However, a position can also be classified as an Auditor 2, Taxation if the incumbent handles independent work of considerable complexity and importance. In reviewing the appellant's PCQs, each appellant has stated that they spend at

least 65% of their time auditing and analyzing complex Estate Tax Returns and screening one-third of the complex Estate Tax Returns that are received by the Branch to determine if an audit is required. Their direct supervisor, Janine Burgoes, Supervising Auditor Taxation, and their program manager, Harold Fox, Chief Auditor, Inheritance and Estate Taxes Branch, both indicated that they agree with the appellants' PCQs. Moreover, Ms. Burgoes has stated in letters on behalf of each appellant, that they each *independently audit the most complex returns* in the Branch. Additionally, Mr. Fox explains on their PCQs that, due to a loss of staff and an increase in complex audit assignments due to changes in tax law and the economy, work normally performed by higher level auditors has been assigned to lower grade staff that has exhibited the ability and desire to take on more complex work. Also, Mr. Fox has submitted letters on behalf of each appellant stating that these auditors are auditing returns *selected for the complexity and revenue potential (importance)*. He further explains, in addition, that they each perform screening duties that requires the *highest level of knowledge and experience* and is normally assigned to an Auditor 1. In other words, the appellants' superiors, who are in the best position to define what is a complex and important Estate Tax audit, confirm that the appellants primarily work independently on complex Estate Tax audits and screenings and also explain why the appellants are primarily working on higher-level work. Further, there is no evidence in the record that refutes the appellants' assertions and their superiors' confirmations.

Accordingly, based on the foregoing, the record amply supports an Auditor 2, classification for the appellants' positions.

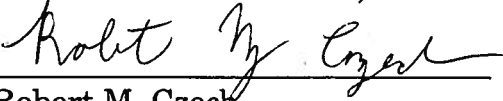
N.J.A.C. 4A:3-3.9(f)(1) provides that in State service, the effective date of implementation shall be the pay period immediately after 14 days from the date that the Civil Service Commission (Commission) received the appeal or reclassification request, or at such earlier date as directed by the Commission. The Commission notes that CPM received Mr. Custode's PCQ on October 15, 2013, Ms. Gonzalez's PCQ on October 29, 2013, and Ms. Morrell's PCQ on October 21, 2013.

ORDER

Therefore, the Civil Service Commission concludes that the positions of Frank Custode, Nancy Gonzalez, and Lourdes Morell are properly classified as an Auditor 2, Taxation. It is ordered that the appellants' positions be reclassified to the title of Auditor 2, Taxation with an effective date of November 2, 2013 for Mr. Custode and November 16, 2013 for Ms. Gonzalez and Ms. Morell. It is also ordered that the appointing authority provide the appellants with differential back pay retroactive to November 2, 2013 for Mr. Custode and November 16, 2013 for Ms. Gonzalez and Ms. Morell.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16th DAY OF JULY, 2014


Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachments

c: Frank Custode
Nancy Gonzalez
Lourdes Morell
Senator Fred H. Madden, Jr.
Karen Engan
Douglas Ianni
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P.O. Box 313
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Robert M. Czech
Chair/Chief Executive Officer

February 26, 2014

Mr. Frank Custode
Department of the Treasury
Division of Taxation
50 Barrack Street, 3rd Floor
Trenton, New Jersey 08695

**RE: Classification Appeal – Auditor 3, Taxation
CPM# 10130256, EID# 000490003, Position #097820**

Dear Mr. Custode:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted.

Issue:

You are appealing your current permanent title of Auditor 3, Taxation (P21) is not consistent your current assigned duties and responsibilities. You contend that the title Auditor 2, Taxation (P24) is consistent with the duties that you currently perform.

Organization:

According to the organizational chart that was submitted, your position is assigned to the Division of Taxation, Audit Activity, Inheritance & Estate Tax Team 6. You currently report directly to Janine Burgess, Supervising Auditor Taxation (S30), and do not possess supervisory responsibility.

Finding of Fact:

The primary responsibilities of your position include, but are not limited to the following:

- Auditing large, complex multi-million dollar estates for Inheritance and Estate tax.
- Interpreting statutes and/or regulations to state government employees, taxpayers and/or others concerned with preparation of tax returns.
- Preparing various legal documents including: wills, deeds of trust, contracts, etc.
- Calculating a value for each business reported in the Estate tax and/or Federal Estate tax returns using various valuation methods.
- Researching matters involving tax assessments.
- Conducting meetings with taxpayers and/or legal representatives.

Review and Analysis:

Your position is currently classified by the title Auditor 3, Taxation (P21-50813). The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related technical work as required.”

The definition section of the job specification for the title Auditor 2, Taxation (P24-50815) states:

“Under direction of a Supervising Auditor, Taxation, or Auditor I, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.”

Mr. Frank Custode

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Positions at this level are characterized by leadership responsibility by acting regularly as a team leader of a small group of professional Auditors performing moderately difficult work.

Positions at this level are expected to be able to perform duties and resolve problems of moderate difficulty or complexity.

Additionally, a further review of the organizational chart shows there are six (6) other Auditor 2, Taxation and seven (7) Auditor 3, Taxation positions within the same unit. Therefore, your position is not functioning as a lead worker position.

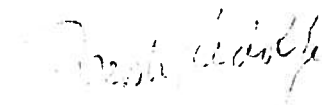
The preponderance of assigned duties and responsibilities of your position that you perform are significantly descriptive of the tasks assigned to the title Auditor 3, Taxation (P21-50813).

Determination:

Based upon the findings of fact above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current permanent title Auditor 3, Taxation (P21-50813).

Please be advised that in accordance with *N.J.A.C.* 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Joseph Ridolfi, Team Leader
Classification and Personnel Management

JR/rmd

c: Laura Budzinski, Treasury, Human Resources



Chris Christie
Governor
Kim Guadagno
Lt. Governor

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Robert M. Czech
Chair/Chief Executive Officer

February 26, 2014

Ms. Nancy Gonzalez
Department of the Treasury
Division of Taxation
50 Barrack Street, 3rd Floor
Trenton, New Jersey 08695

**RE: Classification Appeal – Auditor 3, Taxation
CPM# 10130391, EID# 000175856, Position #069469**

Dear Ms. Gonzalez:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted.

Issue:

You are appealing your current permanent title of Auditor 3, Taxation (P21) is not consistent your current assigned duties and responsibilities. You contend that the title Auditor 2, Taxation (P24) is consistent with the duties that you currently perform.

Organization:

According to the organizational chart that was submitted, your position is assigned to the Division of Taxation, Audit Activity, Inheritance & Estate Tax Team 6. You currently report directly to Janine Burgess, Supervising Auditor Taxation (S30), and do not possess supervisory responsibility.

Finding of Fact:

The primary responsibilities of your position include, but are not limited to the following:

- Interpreting, assessing and verifying account and records in relationship to circular calculations, family and/or marital trust, life estate and/or business valuations.
- Implementing all New Jersey statues and/or Internal Revenue Service (IRS) regulations including: establishing assessment, taxability of inter-vivo transfers, deductions, dispersal of estates, etc.
- Interpreting the provisions of the Federal Estate tax laws and/or the New Jersey Inheritance and Estate tax laws and administrative codes.
- Reviewing Estate tax returns and/or determining if an audit is required.
- Assisting Attorneys, Accountants and/or Executors with the Division of Taxation's interpretation of the Federal Internal Revenue Code and the relationship of the Estate and Inheritance tax statutes and/or regulations.
- Conducting post audit conferences with tax managers, department heads and outside accountants to discuss audit findings and contested issues.

Review and Analysis:

Your position is currently classified by the title Auditor 3, Taxation (P21-50813). The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related technical work as required.”

The definition section of the job specification for the title Auditor 2, Taxation (P24-50815) states:

“Under direction of a Supervising Auditor, Taxation, or Auditor I, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or

Ms. Nancy Gonzalez

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accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.”

Positions at this level are characterized by leadership responsibility by acting regularly as a team leader of a small group of professional Auditors performing moderately difficult work.

Positions at this level are expected to be able to perform duties and resolve problems of moderate difficulty or complexity.

Additionally, a further review of the organizational chart shows there are seven (7) Auditor 2, Taxation and seven (7) Auditor 3, Taxation positions within the same unit. Therefore, your position is not functioning as a lead worker position.

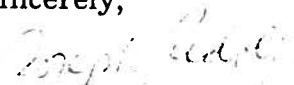
The preponderance of assigned duties and responsibilities of your position that you perform are significantly descriptive of the tasks assigned to the title Auditor 3, Taxation (P21-50813).

Determination:

Based upon the findings of fact above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current permanent title Auditor 3, Taxation (P21-50813).

Please be advised that in accordance with *N.J.A.C.* 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, PO Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,


Joseph Ridolfi, Team Leader
Classification and Personnel Management

JR/rmd

c: Ms. Laura Budzinski, Treasury, Human Resources



Chris Christie
Governor
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l.t. Governor

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Robert M. Czech
Chair/Chief Executive Officer

February 26, 2014

Ms. Lourdes Morell
Department of the Treasury
Division of Taxation
50 Barrack Street, 3rd Floor
Trenton, New Jersey 08695

**RE: Classification Appeal - Auditor 3, Taxation
CPM# 10130390, EID# 000383419, Position #007081**

Dear Ms. Morell:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted.

Issue:

You are appealing your current permanent title of Auditor 3, Taxation (P21) is not consistent your current assigned duties and responsibilities. You contend that the title Auditor 2, Taxation (P24) is consistent with the duties that you currently perform.

Organization:

According to the organizational chart that was submitted, your position is assigned to the Division of Taxation, Audit Activity, Inheritance & Estate Tax Team 6. You currently report directly to Janine Burgess, Supervising Auditor Taxation (S30), and do not possess supervisory responsibility.

Finding of Fact:

The primary responsibilities of your position include, but are not limited to the following:

- Analyzing and/or applying all rules and/or regulations in determining valuations of estates including: the valuation of corporations and/or partnerships, interpretation of revocable or irrevocable trust agreements, taxability of inter vivos transfers, deductions, distribution of an estate and/or calculation of circular calculations.
- Interpreting the provisions of the Federal Estate tax laws and/or the New Jersey Inheritance and Estate tax laws and administrative codes.
- Reviewing Estate tax returns and/or determining if an audit is required.
- Assisting Attorneys, Accountants and/or Executors with the Division of Taxation's interpretation of the Federal Internal Revenue Code and the relationship of the Estate and Inheritance tax statutes and/or regulations.
- Conducting meetings with taxpayers and/or legal representatives.
- Conducting post audit conferences with tax managers, department heads and outside accountants to discuss audit findings and contested issues.

Review and Analysis:

Your position is currently classified by the title Auditor 3, Taxation (P21-50813). The definition section of the job specification for this title states:

"Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related technical work as required."

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Ms. Lourdes Morell

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accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.”

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Additionally, a further review of the organizational chart shows there are seven (7) Auditor 2, Taxation and seven (7) Auditor 3, Taxation positions within the same unit. Therefore, your position is not functioning as a lead worker position.

The preponderance of assigned duties and responsibilities of your position that you perform are descriptive of the tasks assigned to the title Auditor 3, Taxation (P21-50813).

Determination:

Based upon the findings of fact above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current permanent title Auditor 3, Taxation (P21-50813).

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Sincerely,

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c: Ms. Laura Budzinski, Treasury, Human Resources